IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8368 OF 2003

Mrs Janabai Madhav Nikam, .. Petitioner
Vs
Shri Dattu Pandurang Navale & ors. Respondents
Shri K.S.Patil i/b Mr P.N.Joshi, for the petitioner.
Mr M.S.Karnik, for respondent nos 1 and 2.

CORAM : D.B.BHOSALE, J.

DATE : MAY 02, 2005.

P.C.

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. Mr Karnik, learned counsel, waives service for respondent nos 1 and 2. By consent, Rule is heard finally.

3. The petitioner has challenged the order dated 29.10.2001 passed by the trial Court below Exhibit-45 in Regular Civil Suit No.8/98, rejecting the said application filed by the petitioner. The said application was filed seeking reference of issue no.3 under section 85A of the Bombay Tenancy and Agricultural Lands Act, 1948. Issue no.3 was that "whether the defendant prove that she is a tenant of the suit property as contended?". The petitioner-defendant claims tenancy in the suit land. It was also contended in the said application

(Exhibit-45) that in view of the fact that the petitioner-defendant is a tenant in the suit land, the Civil Court has no jurisdiction to entertain the suit. Mr Patil, learned counsel for the petitioner, submitted that an independent proceedings under section 70(b) were initiated in which the petitioner was declared as tenant and in pursuance thereof the proceedings under section 32G were also initiated and as of today they are still pending. He further submitted that the respondents have not challenged the order passed by the tenancy authorities in the proceedings under section 70(b) and,therefore, the Civil Court has no jurisdiction to entertain the suit filed by the respondents seeking declaration and possession of the suit property. The trial Court has rejected the said application (Exhibit-45) mainly on the ground that the petitioner did not produce anything on record to show that his possession in the suit property is as tenant of the respondent-landlord. It appears that the orders passed by the tenancy authorities in the proceedings under section 70(b) were not produced by the petitioner before the trial Court. Keeping that in view and considering that the tenancy authorities have already declared the petitioner as tenant of the suit property, in my opinion, the appropriate course

would be to direct the civil Court to consider the said application (Exhibit-45) afresh, and if it is found that the tenancy authorities have already declared the petitioner as tenant, it may proceed to decide whether it has a jurisdiction to hear the suit. To this course, Mr Karnik, learned counsel for the respondents did not oppose. Hence the following order.

(i) The impugned order dated 29.10.2001 is quashed and set aside. Exhibit-45 is restored to file.

(ii) Parties are allowed to produce additional documents in support of their contentions before the trial Court within a period of four weeks from the date of receipt of this order. On production of documents, the trial Court shall proceed to decide the application Exhibit-45 afresh and if it is satisfied that the tenancy authorities have already declared the petitioner as tenant of the suit property it may proceed to decide issue no.4 as to whether the Civil Court has jurisdiction to hear the suit. The trial Court shall endeavour to pass appropriate orders below Exhibit-45 as expeditiously as possible and preferably within a period of 12 weeks from the date of receipt of this order.

(iii) Let me make it clear that the order impugned was passed on 29.10.2001 and that was earlier challenged by way of civil revision application no.226 of 2002 in which the ad-interim order passed in terms of prayer clause (b) of the civil revision application was operating until 22.2.2002. The civil revision application was, however, disposed of as not maintainable and hence the instant petition came to be filed. No interim order was passed in this petition and as a result of which there was no stay to further proceedings of the suit. The learned counsel appearing for the parties are not in a position to state as to whether the suit is still pending. However, if the suit has already been disposed of by the trial Court, it may ignore the aforestated directions. Accordingly, the rule stands disposed of.

(D.B.Bhosale, J.)

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